

RESPONSE & PREVENTION BRANCH

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HANNOCH WEISMAN

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

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P.O. BOX 1040

NEWARK, NJ 07101-9819

244281



WRITER'S DIRECT LINE:

FILE #

201-535-5336

rconway@hannoch.com

36150-00002

June 12, 1997

Jeff Bechtel, CHMM
U.S. Environmental Protection
Agency - Region II
Response & Prevention Branch
Building 209 (MS-211)
2890 Woodbridge Avenue
Edison, New Jersey 08837-3679

**Re: Towne Laboratory, Inc. v. Carl Curtis, et al.
ISRA Case No. 93452**

Dear Mr. Bechtel:

We represent the Towne Laboratories, Inc. ("Towne Labs") in the above-referenced matters. As part of its ISRA investigation of Towne Labs former Bell Avenue Somerville facility ("Facility"), the NJDEP has demanded that Towne Labs obtain access to the Color Technologies plant, which is located next to the Facility. Our efforts to negotiate an access agreement with the property's owner, Carl Curtis, have failed and we have been instructed by NJDEP to file an access complaint pursuant to N.J.S.A. 58:10B-16. It is our understanding that your office is conducting an emergency response investigation on the same Color Technologies property and may have taken custody or control of a portion of that property.

In an effort to inform your office of our activities relating to the Color Technologies site and coordinate activities at the site, we enclose copies of the summary access complaint and supporting papers.

HANNOCH WEISMAN

A PROFESSIONAL CORPORATION

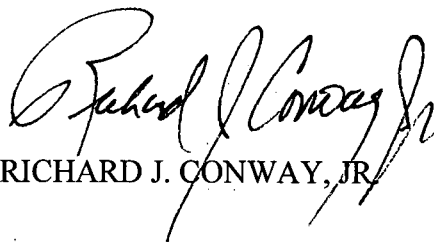
Jeff Bechtel, CHMM

June 12, 1997

Page 2

If you have any comments, concerns or questions regarding the above, please do not hesitate to contact me or our environmental consultant, William Brokaw of Levine Fricke-Recon. If you have any objections to access for the required groundwater investigation, please advise immediately. Otherwise, we will reach out to you if and when access is granted.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard J. Conway, Jr.", is written over the typed name. The signature is fluid and cursive.

RICHARD J. CONWAY, JR.

Enclosures

cc: William Brokaw, Levine Fricke-Recon

HANNOCH WEISMAN

A Professional Corporation

4 Becker Farm Road

Roseland, New Jersey 07068

(201) 535-5300

ATTORNEYS FOR TOWNE LABORATORIES, INC.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
SOMERSET COUNTY
DOCKET NO.

TOWNE LABORATORIES, INC.,

Plaintiff,

v.

CARL CURTIS, COLOR
TECHNOLOGY, INC., JAMES DOE,
JOSEPH DOE, JEREMY DOE, JANE
DOE AND JOAN DOE (the last five
names being fictitious names), STATE
OF NEW JERSEY, DEPARTMENT
OF ENVIRONMENTAL
PROTECTION and NEW JERSEY
SPILL AND COMPENSATION
FUND ADMINISTRATOR,

Defendants.

Civil Action

**SUMMARY PROCEEDING UNDER
SECTION 40 OF P.L. 1993, C. 139, N.J.S.A.
58:10B-16**

Plaintiff, Towne Laboratories, Inc. (hereinafter "Towne Labs" or "Plaintiff"), by way of Complaint against defendants states as follows:

PARTIES

1. Plaintiff Towne Laboratories, Inc., is a New Jersey corporation, having an address for the purposes hereof in care of Mr. John Obzansky, President, 93 East Spring Street, Somerville, New Jersey ("Towne Labs"). Plaintiff is the former owner of certain real property commonly known as Lot 4, Block 127, located at 6-10 Bell Avenue, Somerville (the "Site"). On or about August 3, 1993, Plaintiff substantially transferred or conveyed all of its assets, including the Site, to Towne Technologies, Inc.

2. Upon information and belief one or both Defendants Carl Curtis, who resides in 243 Davidson Avenue, Ramsey, NJ 07445, and/or a corporate entity now or formerly known as Color Technology, Inc. ("Color Tech"), are (is) the owner(s) of certain real property (together referred to as "Defendant Owners"), commonly known as Lot 1, Block 127, located at Cornell Street, Somerville, NJ (the "Color Tech Property"), which is immediately adjacent to the Site.

3. Upon information and belief, Color Tech operated a facility that produced color dispersions in solid forms for use by paint, plastic and printing manufactures since 1983 at the Color Tech Property.

4. Upon information and belief, Carl Curtis owns all or part of Color Technology, Inc. and is or was an officer and/or shareholder of Color Technology, Inc ("Color Tech").

5. Defendants James Doe, Joseph Doe, Jeremy Doe, Jane Doe and Joan Doe (all fictitious names) are other persons or entities with interests in the Property as owners or operators.

6. Defendant The New Jersey Department of Environmental Protection ("NJDEP"), having its offices at 401 State Street, CN 402, Trenton, NJ 08625, is a principal de-

partment in the Executive Branch of the Government of the State of New Jersey. *N.J.S.A.* 13:1D-1.

7. Defendant New Jersey Spill and Compensation Fund Administrator ("Spill Fund"), having its offices at 401 State Street, CN 402, Trenton, NJ 08625, Trenton, New Jersey, is the chief executive of the Spill Fund pursuant to *N.J.S.A.* 58: 10-23.11, et seq. The Spill Fund was established by the legislature to provide a fund "for swift and adequate compensation" to a persons damaged by the discharge of hazardous substances within or outside the jurisdiction of the State of New Jersey which "constitutes a threat to the economy and environment of this State." *N.J.S.A.* 58:10-23.11a.

BACKGROUND

8. Plaintiff is involved in an investigation pursuant to the New Jersey Environmental Cleanup Responsibility Act, *N.J.S.A.* 13:1K-6, et seq. ("ECRA") (now the Industrial Site Recovery Act, *N.J.S.A.* 13:1K-6 et seq. (amended 1993) ("ISRA") and the regulations promulgated thereunder as modified from time to time, at its former manufacturing facility in Somerville, NJ (the "Facility") (ECRA and ISRA are collectively referred to as ISRA). commenced in 1993 under ISRA Case Number 93452.

9. By letter dated August 1, 1996, NJDEP instructed Plaintiff to install a well(s) on the Property to assess various issues under ISRA Case Number 93452. Plaintiff does not believe a well is necessary. Nevertheless, Plaintiff has asked Defendants Curtis and Color Tech for access. They have denied access.

10. NJDEP is charged by statute with enforcing the laws of the State of New Jersey concerning the protection of the environment. *N.J.S.A.* 13:1D-9e. NJDEP has authority to regulate cleanup activities under ISRA and all supplements and amendments thereto. *N.J.S.A.* 13:1K-6 et seq. (as amended 1993). NJDEP is joined, among other reasons, so that if the Court

determines to deny access for any reason, NJDEP will be bound as a party to the Court's determination in future ISRA proceedings and/or any related matter.

11. On or about May 1, 1989, a fire occurred at the Color Tech Property which involved the discharge of certain substances into a potable water source. The NJDEP conducted an investigation under Case No. 89-05-01-0546 and advised Color Technology, Inc., in part, to obtain approval from the local sewerage treatment plant to discharge its dyestuff materials into the sanitary sewer.

12. Defendant Owners and others may also have had other spills or discharges of hazardous substances at or about the Color Tech Property. In accordance with *N.J.S.A. 58:10B-16*, this action does not assert claims against Defendant Owners for damages that may have been or hereafter may be sustained by Plaintiff by reason of the foregoing.

13. On or about August 8, 1989, Plaintiff, under the notification procedures pursuant to *N.J.S.A. 13:1K-15 et seq.* and *N.J.S.A. 58:10-23.11 et seq.*, forwarded information to NJDEP regarding Color Technology's improper storage of hazardous substances and data which revealed that excessive levels of copper and lead in stormwater was being discharged from a pipe into an adjoining ditch directly from the Color Tech Property.

14. Plaintiff has advised NJDEP that certain contaminants on its Site are background contaminants and/or contaminants migrating from the Color Tech Property to the Site.

15. Defendant NJDEP improperly has required Plaintiff to investigate whether ground water from Plaintiff's Site was and is contaminated by volatile organic compounds migration from the Color Tech Property. NJDEP requires Plaintiff to install, operate, maintain and sample ground water monitoring wells on the Property. At the same time, or thereafter, Plaintiff may also be required to conduct additional work and/or remediation on the Property under ISRA pursuant to NJDEP demands under Case No. 93452.

16. Upon information and belief, in or about February 1996, Color Tech sold and/or transferred substantially all or some of its assets and company name, including assets located at Color Tech Property, to Pan Chemical Corporation without compliance with ISRA. *N.J.S.A. 13:1K-9(a)* and *N.J.S.A. 13:1K-6, et seq.* NJDEP has not enforced ISRA against Color Tech so as to relieve Plaintiff of the demand for sampling on the Color Tech Property.

17. Upon information and belief, on June 5, 1997, the Star-Ledger published an article relating to the Color Tech Property, reporting that the United States Environmental Protection Agency ("EPA") initiated an "investigation into problems at Color Technology." The Star-Ledger article reported that conditions at the Color Tech Property "included the improper storage of hundreds of drums of toxic and flammable liquids, including methyl ethyl ketone, acetone and dimethylfloramide, solvents and petroleum-based chemicals." A copy of the June 5, 1997 Star-Ledger article is attached hereto as Exhibit A.

18. In order to obtain reimbursement for costs incurred by Towne Labs due to the discharges by or at the Color Tech Property described above, Towne Labs filed a claim on February 2, 1990 against the New Jersey Spill Compensation Fund, currently pending under Claim No. 90-0013S. Plaintiff intends to amend its claim and seek reimbursement for all costs associated with NJDEP's demands to obtain access to the Color Tech Property along with other damages related thereto. Plaintiff's rights to reimbursement from the Spill fund are not the subject of this action. Nonetheless, defendant Spill Fund Administrator is joined because should the Spill Fund object to the occurrence of this proceeding or any of the decisions hereunder, Defendant should be bound as a party to the Court's determinations in this and any other related proceedings.

19. Plaintiff, through its environmental consultant Levine Fricke-Recon ("Recon"), has requested that Defendant Owners grant Plaintiff access to the Property to conduct the work described in this complaint. Defendant Owners have not granted Plaintiff's requests for access. Since August 12, 1996, Towne Labs, through its consultant Recon, made three requests

that Mr. Curtis and Color Technology grant Plaintiff access to the Color Tech Property to perform the work required by the NJDEP. On March 4, 1997, Defendant Owners were requested to grant access, and was warned that if this request was denied, Plaintiff would initiate this Complaint in accordance with NJDEP requirements. By letter dated April 4, 1997 Defendant Carl Curtis responded to Plaintiff's March 4 letter by stating that he "can not comply with [Plaintiff's] request for access." Defendant Curtis' April 4, 1997 letter is attached hereto as Exhibit B.

20. Plaintiff has tendered to Defendant Owners a proposed form of access agreement. This agreement addressed, among other things, the following topics: entry notice, nature of work, restoration, indemnification, and insurance. The proposed access agreement is attached hereto as Exhibit C.

COUNT I

21. Plaintiff repeats and realleges all prior allegations as if set forth herein.

22. Section 40(a) of ISRA, *N.J.S.A. 58:10B-16*, if valid, permits Plaintiff to seek and obtain an order granting access to the Property in a summary manner if good faith efforts to gain access fail. This section states in relevant part:

If, after a good faith effort, the person undertaking the remediation and the property owner fail to reach an agreement concerning access to the property, the person undertaking the remediation shall seek an order from the Superior Court directing the property owner to grant reasonable access to the property and the court may proceed in the action in a summary manner.

23. Plaintiff asked and Defendants denied Plaintiff's reasonable good faiths efforts to gain access to the Color Tech Property.

WHEREFORE, Plaintiff requests that this Court issue an Order declaring and requiring that:

(a) Defendant Owners and Defendant Doe(s), and their respective agents, servants, employees, respective successors, permitted assigns, designees, contractors, and those

acting in concert with such defendants, grant Plaintiff access to the Color Tech Property for the purpose of installing, operating, maintaining, and sampling ground water monitoring wells, and performing such other work as may be required necessary or advisable in accordance with ISRA under ISRA Case No. 93452;

(b) The grant of access be made in consideration of the following terms and conditions:

Plaintiff and Defendant Owners shall execute and perform an access agreement, attached hereto as Exhibit C, in which Plaintiff as Licensee, makes assurances to Defendant Owners that Plaintiff will: conduct all work in a workmanlike manner, take reasonable steps to comply with applicable laws, provide 24-hour notice to Defendant Owners of its entry onto the Property, restore and repair damage done to the Property as a result of the planned work, properly seal the well once the work is completed or the agreement is terminated, indemnify Defendant Owners for certain occurrences, provide and maintain insurance, and limit the scope of the work to whatever is necessary or advisable under ISRA;

(c) Defendant Spill Fund be bound by any determinations of law and fact under this action or any related future proceedings;

(d) Plaintiff is not barred from later asserting any and all rights and claims it may have against the Defendants in accordance with *N.J.S.A. 58:10B-16*; and/or

(e) Such other relief on such terms and conditions as the Court deems just and proper.

COUNT II

24. Plaintiff repeats and realleges all prior allegations as if set forth herein.

25. Defendant NJDEP has requested and demanded that Plaintiff obtain access to the Property.

26. Plaintiff has advised Defendant NJDEP that Defendant Owners have refused access to the Property, and that Plaintiff does not believe access is necessary, advisable or obtainable.

27. If relief under Count I is denied, it will be impossible for Plaintiff to obtain access to the Property and perform the work presently required by the NJDEP under ISRA.

28. NJDEP has threatened to seek civil or civil administrative penalties for Plaintiff's failure to abide by NJDEP's demands concerning access to the property. Attached hereto as Exhibit D is a copy of the August 1, 1996 letter from NJDEP.

WHEREFORE, Plaintiff requests that in the event relief under Count I is denied, this Court issue an Order declaring that:

(a) Plaintiff is not required, permitted or obligated to have access to the Property,

(b) Defendant NJDEP be enjoined from continuing to require that Plaintiff obtain access to the Property and from penalizing Plaintiff in any way for failure to obtain such access and conduct such work,

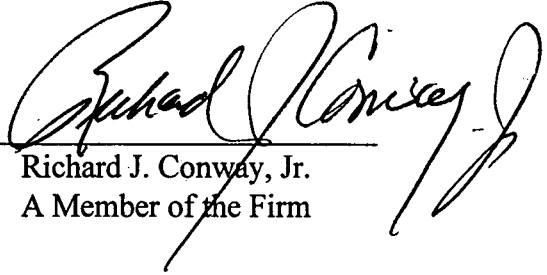
(c) Defendant Spill Fund be bound by any determinations of law and fact under this action or any related future proceedings,

(d) Defendant Spill Fund be estopped from ever asserting that Plaintiff's access suit costs are not related to Plaintiff's Spill Fund claims; and/or

(e) Such other relief on such terms and conditions that the Court deems just and proper.

HANNOCH WEISMAN
A Professional Corporation
Attorneys for Plaintiff

By


Richard J. Conway, Jr.
A Member of the Firm

DATED: June 12, 1997

Exhibit A



ALL-STATE® LEGAL 800-222-0610 EDRI1 RECYCLED

Any correspondence dealing with the calendar must be sent to The Star-Ledger, 187 Mill Lane, Mountainside, N.J. 07092. Notices must include type of event, time, date, site, full street address, town and phone number.

RECON

THURSDAY, JUNE 5, 1997

THE STAR-LEDGER

Drums sound toxic alarm at Somerville site

Abandoned chemicals found at paint factory prompt officials to prepare evacuation plan

By Eleanor Barrett
STAR-LEDGER STAFF

Emergency officials have been bracing for a possible worst-case scenario — a fire releasing toxic fumes into the atmosphere — since hundreds of drums of dangerous chemicals were found abandoned at Color Technology Inc. in Somerville.

Somerset County, Somerville and Raritan officials have devised a plan to evacuate a half-mile radius around the paint and pigment manufacturing plant on Cornell Boulevard, on the Somerville-Raritan border, and in the middle of a residential neighborhood. The evacuation plan includes homes,

schools, churches, offices, banks, apartment buildings and stores.

A major fire at the site would also result in the closing of Route 208, the Somerville Circle, and NJ Transit's Raritan Valley Line, authorities said.

Federal Environmental Protection Agency officials, who launched their investigation into problems at Color Technology on Tuesday, agreed that if there was a fire, it would be best to err on the side of caution.

"We've concurred with their plan, to treat it as a severe fire. It would burn hot and would be a very strong fire. It's going to be an all-or-nothing type of fire," said Jeff Bechtel, an environmental scientist who is heading up

the EPA investigation.

The probe began May 27, when local officials, believing the property to be abandoned, condemned it and declared it to be an imminent hazard. Somerville officials say, however, that they had been suspicious of the plant's operations since December, when they started noticing utility shut-offs and employee layoffs.

Neighbors and former employees who stopped by the building yesterday — now cordoned off with police tape — said they are not surprised that owner Carl Curtis is under the gun of federal and local officials, though Curtis maintains he is innocent of any wrongdoing.

Somerville fire official Barry Van Horn disagrees.

"Once inside, we realized the condition of the building and its contents posed a serious threat, not only for

the building, but for the firefighters who would have to depress the fire," he said.

Bechtel said those conditions included the improper storage of hundreds of drums of toxic and flammable liquids, including methyl ethyl ketone, acetone and dimethylformamide, solvents and petroleum-based chemicals.

According to the Emergency Response Guidebook of the Department of Transportation, health hazards posed by all three chemicals in a fire include the fumes turning into poisonous gas, causing dizziness or suffocation, and burning of skin and eyes.

The environmental problems at the Somerville plant are not the only concerns Curtis, of Ramsey, has to deal with. According to borough records, he owes upwards of \$18,000 in sewer and municipal taxes.

97%

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JUN-10-1997 15:04

Exhibit B



ALL-STATE® LEGAL 800-222-0510 EDR11 RECYCLED

Carl S. Curtis
243 Davidson Avenue
Ramsey, New Jersey 07446

April 4, 1997

Richard J. Conway, Jr
Hannoch Weisman
Counselors at Law
P.O. Box 1040
Newark, New Jersey

Re: Your Letter of March 1997
FILE 36150-2

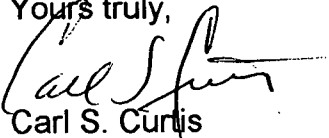
Dear Mr. Conway:

I am sorry, if my previous response to Recon was not conveyed to you, the request was replied to promptly after it was received. I can not comply with your request for access. Our property has limited usable space, and the Towne Labs well will restrict our ability to use the property in it's entirety.

In addition, the information you sent with your letter is incomplete. The access agreement is totally against property rights as I understand them. I have discussed this matter with several firms, who had similar experiences and the issue were resolved in a manner consistent with my position.

I would be more than happy to discuss this matter with you by phone. You can reach me at 201-427-4300.

Yours truly,


Carl S. Curtis

File: C:\DOC\CT\NLW_TW971.WPD

Exhibit C



ALL-STATE® LEGAL 800-222-4510 E3M11 RECYCLED

Prepared By:

Richard J. Conway, Jr., of HANNOCH WEISMAN

ACCESS AGREEMENT

This Agreement is made as of the _ day of __ 1997 between TOWNE LABORATORIES, INC., having an address for the purposes hereof in care of Mr. John Obzansky, President, 93 East Spring St., Somerville, N.J. 08876 ("Licensee") and COLOR TECHNOLOGIES, INC. having an address of _____ ("Licensor").

RECITALS

A. Licensor is the owner of certain real property commonly known as Lot 1, Block 127, located at Cornell Blvd., Somerville NJ, New Jersey (the "Property") currently and/or formerly occupied as Color Technologies' Somerville Site. At one time Licensor had a fire on its property, a number of underground storage tanks and direct discharges to a ditch separating the Property from Licensee's former facility.

B. Licensee is involved in an investigation (ISRA Case 93452) pursuant to the New Jersey Industrial Site Recovery Act, formerly the New Jersey Environmental Cleanup Responsibility Act ("ECRA"), N.J.S.A. 13:1K-6 et seq. (amended 1993) and regulations promulgated thereunder, as modified from time to time (collectively "ISRA"), at its former manufacturing facility located at 6-10 Bell Avenue, Somerville NJ (Lot 4, Block 127) (the "Facility") adjacent to the Property. The New Jersey Department of Environmental Protection ("NJDEP") wants Licensee to install a well(s) on the Property to assess some of these issues.

C. Section 40 of ISRA (N.J.S.A. 58:10B-16) authorizes Licensee, upon written agreement, to access the Property of Licensor for the purposes of conducting ISRA Compliance activities as described herein.

D. Licensor will grant to Licensee access to the Property for itself and for the New Jersey Department of Environmental Protection ("NJDEP") for purposes of conducting ISRA compliance activities as described herein, upon the terms and conditions set forth in this Access Agreement.

NOW THEREFORE, for the purpose set forth above and in consideration of the recitals and mutual promises herein contained, Licensee, Licensor agrees as follows:

1. LICENSE

1.1 Grant. Licensors on behalf of itself, its divisions, subsidiaries, affiliates, tenants and heirs, successors and permitted assigns hereby grants to Licensee, its employees, agents, contractors, sub-contractors, invitees and licensees (collectively "agents or contractors") and their heirs, successors and assigns and NJDEP a license to enter upon, occupy, and use the Property, rent-free, subject to all the terms and conditions herein.

1.2 Limitation of Purpose. The Property may be entered upon, occupied, or used by Licensee and NJDEP for fulfillment of investigative and remedial activities necessary or advisable to comply with ISRA or NJDEP directions, including the boring and sampling of soils, and the installation and sampling of groundwater monitoring wells, in accordance with NJDEP regulations, and for incidental purposes related thereto, including but not limited to soil-gas surveys, groundwater remediation, Packer testing, hydrogeological testing, video taping of bedrock inside the well and the implementation of remedial measures, beginning upon the date of this Access Agreement and continuing until this Access Agreement is terminated as hereinafter provided. Notwithstanding the foregoing, NJDEP's rights under this License are derivative, and are expressly limited to the rights of inspection and sampling to confirm Licensee's performance under applicable laws and regulations.

1.3 Information about the Property. Licensors shall provide to Licensee any available information about the condition of the Property, including but not limited to information regarding any underground defects or hazards on the Property known to them prior to any drilling activities. The indemnification provisions of Article 6 shall not apply to any losses, casualties, claims, demands, liabilities, damages, costs, or expenses directly or indirectly arising out of a failure by Licensors to provide the information required by this Paragraph.

2. DURATION AND TERMINATION

2.1 Duration. Licensee and NJDEP shall have the rights granted herein beginning upon the date of this Access Agreement and continuing until the later of (a) one (1) year or (b) until 90 days after all investigative and remedial actions required by NJDEP have been completed.

2.2 Termination. Except as otherwise expressly provided herein, Licensors may not terminate this Access agreement. Licensors may cause Licensee and its agents or contractors to cease any work at the Property conducted in violation of this Access Agreement upon oral notice (a "Stop Notice") to the person in charge of such work. Licensors shall provide to Licensee written confirmation of any Stop Notice within forty-eight (48) hours after the Stop Notice. Licensee may resume work upon providing reasonable assurances that the violation will not continue. The indemnification provisions of Article 6 shall not apply to any losses, casualties, claims, demands, liabilities, damages, costs, or expenses directly or indirectly arising out of a failure by Licensee, its agents or contractors, to perform any work which Licensors has caused to be ceased pursuant to this Paragraph. In the event that Licensors improperly issues a Stop Notice, the issuer shall reimburse Licensee for all losses, costs, and liabilities incurred by reason of such Stop Notice.

3. ENTRY NOTICE.

3.1 Before entering any portion of the Property, Licensee and its agents or contractors shall notify (the "Entry Notice") the Licensors no less than twenty-four (24) hours prior to the requested entry time, unless waived by Licensors.

4. FURTHER CONDITIONS OF LICENSE

4.1 Compliance With Laws. Licensee agrees that in connection with its exercise of the rights herein granted and its compliance with ISRA, Licensee and its agents or contractors will take reasonable steps to comply with applicable laws, rules and regulations of NJDEP.

5. NATURE OF WORK

5.1 Workmanlike Manner. Licensee shall use reasonable efforts to perform the work hereunder in a workmanlike manner and shall plan, schedule, and conduct all sampling, testing, cleanup or remediation to be conducted by Licensee in such manner as is reasonably practical to avoid material inconvenience or interference to Licensors and any business or operations conducted at the Property so that their economic utility is not diminished or disturbed in any material respect.

5.2 Restoration. To the extent reasonably practical, and to the extent not prohibited by NJDEP under ISRA and the laws applicable to the Property, Licensee shall repair and restore damage done to the Property resulting from any work on the Property performed by Licensee as part of this agreement. Upon NJDEP's approval and within 90 days following completion of Licensee's obligations under ISRA, Licensee will seal and abandon the ground water monitoring wells installed on the Property pursuant to this Access Agreement in accordance with

NJDEP regulations. Such abandonment will be deemed to constitute complete restoration, within the meaning of this paragraph, as to work done on the Property relating to the ground water monitoring wells.

5.3 Miscellaneous. Licensee, in a timely manner, shall furnish Licensor with copies of all relevant documents, test data and other information, including all documents received from NJDEP pertaining to the wells installed as part of this agreement.

6. INDEMNIFICATION

6.1 General. Except as provided below, Licensee hereby agrees to indemnify and to hold Licensor harmless from and against any and all losses, liabilities, damages, and expenses (hereinafter "Claims") arising solely from: (i) Licensee's breach of its obligations hereunder; and (ii) the negligence of Licensee or any of its agents or contractors while acting under this Access Agreement on the Property. This paragraph shall not apply to any Claims arising after termination or expiration of this Agreement or to any claims as to which notice is not given within the earlier of two (2) years after either the date it accrues or the date of termination of this Access Agreement.

6.2 Sole Remedy. In no event shall Licensee be liable for consequential damages, including but not limited to lost value or profits. Licensor waives and releases any claims it may have against Licensee except as expressly provided in Paragraph 6.1.

6.3 Licensor's Negligence. Licensee shall have no liability for claims arising by reason of pre-existing conditions on the Property or Licensor's or its divisions', subsidiaries', affiliates', tenants' or their agents', servants', employees', licensees' or invitees' joint, several or individual negligence or misconduct.

7. INSURANCE

7.1 Licensee's contractor will maintain Licensor as an additional insured on its existing policies during all periods in which Licensee or its contractors exercise any of its rights and privileges under this Access Agreement of the following types and amounts, and shall, upon written demand made prior to Licensee's initial entry onto the Property, provide copies of endorsement or other evidence of the insurance coverage:

Personal Injury	- \$1 million
Property Damage	- \$1 million
Worker's Compensation	Statutory

8. GENERAL TERMS

8.1 Governing Law. This Access Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

8.2 Entire Agreement. Subject to the limitation of Paragraph 8.3 below, this Access Agreement contains the entire agreement between the parties concerning its subject matter, and supersedes and replaces all prior agreements and understandings with respect to Licensee's access to the Property.

8.3 Limitation of Purpose. This Access Agreement concerns only the terms and conditions under which Licensee will have access to the Property in order to comply with ISRA and other environmental statutes. Notwithstanding any other provision of this Access Agreement, this Access Agreement is not intended to affect any claim that any party may have against any other person not a party to this agreement (and not an agent, servant or employee of a party), for costs incurred or work done in compliance with ISRA or any other law, or arising out of any condition at the Property or any defense to such a claim. This Agreement is also not intended as, and shall not constitute, a waiver or release of claims either party may now or hereafter have against the other for costs of investigation and remediation of environmental contamination migrating from the Facility to the Property or from the Property to the Facility, if any.

8.4 Amendment. No agent, employee, or other representative of either party is empowered to alter or amend any of the terms of this Access Agreement, unless such alteration and /or amendment is in writing and has been signed by an authorized representative of each of the parties. This provision cannot be orally waived.

8.5 Paragraph Headings. The paragraph headings appearing herein are for the convenience of the parties and are not to be used or construed so as to modify the terms and conditions of this Access Agreement in any fashion.

8.6 Successors, Assigns, etc. Anything to the contrary notwithstanding, the terms and conditions of this Access Agreement and the rights and obligations created as a result thereof, shall be binding upon and/or inure to the benefit of, the parties hereto, their officers, directors, agents, employees, their respective successors, assigns, designees and contractors, including any future owner and/or occupant of the Property.

8.7 Notice. Any and all notices permitted or required to be given pursuant to this Access Agreement will be given in writing by certified mail, return receipt requested, or by a recognized overnight mail courier, to Licensor to the address first noted above and to Licensee to the address first noted above with a copy to Hanoach Weisman, A Professional Corporation, 4 Becker Farm Roseland, New Jersey 07068, Attention: R. J. Conway, Jr.

IN WITNESS THEREOF the parties have executed this Agreement on the date
hereinbefore first indicated.

ATTEST:

LICENSOR

By: _____

Name: _____

Name: _____

ATTEST:

LICENSEE

Towne Laboratories, Inc.

By: _____

Name: _____

Name: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
)SS.
COUNTY OF _____)

BE IT REMEMBERED that on this _____ day of _____, 19____, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared _____ and _____, who, I am satisfied, are the persons who signed the within Instrument as President and _____ Secretary of COLOR TECHNOLOGIES, INC., the corporation named therein as LICENSOR and they thereupon acknowledged that the said instrument was made by the corporation and sealed and delivered by them as such officers and is the voluntary act and deed of the corporation, made by virtue of authority from its Board of Directors.

A Notary Public of the State
of New Jersey

[CORPORATE ACKNOWLEDGMENT

STATE OF _____)
)SS.
COUNTY OF _____)

BE IT REMEMBERED that on this _____ day of _____, 19____, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared _____ and _____, who, I am satisfied, are the persons who signed the within Instrument as President and _____ Secretary of TOWNE LABORATORIES, INC., the corporation named therein as LICENSEE and they thereupon acknowledged that the said instrument was made by the corporation and sealed and delivered by them as such officers and is the voluntary act and deed of the corporation, made by virtue of authority from its Board of Directors.]

A Notary Public of the State
of New Jersey

Exhibit D



ALL-STATE® LEGAL 800-222-0510 EDH11 RECYCLED



State of New Jersey

Department of Environmental Protection

Christine Todd Whitman
GovernorRobert C. Shinn, Jr.
CommissionerWilliam Brokaw
Recon Systems, Inc.
5 Johnson Drive
P.O. Box 130
Raritan, NJ 08869

AUG 01 1996

Re: Remediation Agreement: In the Matter of Towne Laboratories, Inc. (Towne RA)
Towne Laboratories, Inc.
Somerville Borough, Somerset County
ISRA Case #93452
Remedial Investigation Reports Dated: January 30, and March 29, 1996

Dear Mr. Brokaw:

Please be advised that the New Jersey Department of Environmental Protection (NJDEP) has completed its review of the above referenced Remedial Investigation Reports (RIRs). The NJDEP's comments regarding the RIRs are noted below:

I Hexavalent Chromium (Cr^{+6}) Sample Results

A. NJDEP has completed its quality assurance/quality control (QA/QC) review of the Cr^{+6} analytical results performed by the laboratory, Aqua Air Analytical, included with the above referenced RIRs, and hereby conditionally rejects the Cr^{+6} results for the following reasons:

1. The Laboratory failed to provide documentation for the pH adjustments (7.5 ± 0.5) for method 3060;
2. The frequency for the Calibration Check Standard analyses can not be determined. The Laboratory failed to provide an analysis run log; and
3. The Laboratory failed to provide a post-verification spike analysis using a field sample.

Towne Laboratories, Inc. shall submit the missing QA/QC documentation, noted above, for NJDEP to complete its review.

II Soil Comments

A. Please be advised that NJDEP will withhold comments regarding the need for any additional chromium investigation/remediation until after NJDEP has received and reviewed the Cr^{+6} QA/QC documentation noted above.

Historic Fill Materials

B. Towne Laboratories, Inc.'s Fill Location Map and the narrative description for the location of the historic fill material, including coal ash and cinders, included in the March 29, 1996 RIR, do not agree. Towne Laboratories, Inc.'s narrative description locates the fill on the eastern side of the facility, while the Map shows the fill on the western side of the facility. Towne Laboratories, Inc. shall correct this discrepancy.

C. Towne Laboratories, Inc. in its March 29, 1996 RIR, reported that the soil samples, which were collected to characterize the fill material, were not analyzed for metals (PPM) based upon prior soil results from sample location Swale 102/1. However, in its January 30, 1996 RIR, Towne Laboratories, Inc. reported that it believed that "the metals in the groundwater are apparently the result of the coal ash and cinders that have been observed in the soil". Additionally, the highest levels of metals found in the ground water were found in monitoring wells MW-1 and MW-2, which are on the other side (east) of the building from the swale. Towne Laboratories, Inc. has not demonstrated that metals are not a concern in the fill materials. Additional fill characterization for metals is required.

III. Ground Water Comments

A. Towne Laboratories, Inc. continues to claim that all of the ground water contamination found on-site is from the off-site operations of Color Technology. Additionally, Towne Laboratories, Inc. states that NJDEP should investigate site conditions at Color Technology's facility, before NJDEP requires any further ground water investigation by Towne Laboratories, Inc. Please be advised that pursuant to the Industrial Site Recovery Act (ISRA), N.J.S.A. 13:1K-6 et seq., it is the responsibility of Towne Laboratories, Inc. to demonstrate that ALL of the ground water contamination found on-site is from an off-site source. In the January 29, 1996 RIR, Towne Laboratories, Inc. proposed resampling the monitoring wells for metals, since some of the metals contamination is suspected to be associated with historic fill and not from Color Technology. Additionally, Towne Laboratories, Inc. used the same solvents found in the ground water in its own operations, has sumps in its process areas that are in direct contact with the ground water and had historically discharged into the swale area between Color Technology's and Towne Laboratories, Inc.'s facilities. Towne Laboratories, Inc. has failed to demonstrate that all of the on-site ground water contamination at the above referenced facility is from an off-site source. Therefore, Towne Laboratories, Inc.'s proposal for no further ground water investigation is hereby denied.

B. NJDEP has reviewed Towne Laboratories, Inc.'s most recent Ground Water Flow data. Please be advised that NJDEP does not agree with Towne Laboratories, Inc.'s conclusion that the ground water flow is towards the southeast, from Color Technology's facility and across Towne Laboratories, Inc.'s facility. Towne Laboratories, Inc.'s Ground Water Contour Map shows the existence of a ground water mound underneath the building. Shallow ground water flow from the Color Technology (western) side of the facility appears to be parallel (south-southwest) to the building, while ground water flow on the other side of the building appears to be towards the southwest. Additional monitoring points are required to establish ground water flow direction.

G. Although NJDEP agrees with Towne Laboratories, Inc.'s conclusion that monitoring well MW-5 is drawing water from a deeper water bearing zone than the other monitoring wells on-site, Towne Laboratories, Inc. shall not seal MW-5 as proposed. Please be advised that elevated levels of chlorinated solvents have been found in this monitoring well. Additional investigation may be required depending on the results from Towne Laboratories, Inc.'s further investigation of shallow ground water flow in the area.

D. Towne Laboratories, Inc. shall install two additional shallow monitoring wells on-site (locations A & B) and one shallow monitoring well off-site (location C), in the approximate locations shown on the enclosed Figure 1. Towne Laboratories, Inc. may want to consider installing these three wells manually, like monitoring wells MW-3 and MW-4, to insure that these three new wells are installed into the same water bearing level as MW-1 through MW-4.

E. Please be advised that N.J.S.A. 58:10B-16 provides a cause of action for persons responsible for conducting the remediation (person(s)) to obtain access to property not owned by those person(s) for the purpose of conducting remediation activities on that site.

Pursuant to N.J.S.A. 58:10B-16, a person seeking access must first attempt to reach an agreement with the property owner. The person(s) seeking access must make "good faith efforts" to reach an agreement with the property owner. Should the person(s) seeking access fail to reach an agreement concerning access, the person(s) responsible to conduct the remediation shall seek an order from Superior Court directing the property owner to grant reasonable access to the property.

NJDEP will not impose or seek to impose civil or civil administrative penalties for the failure of a person(s) to perform a remediation on a property not owned by that person within the time schedule required by the applicable regulation if the following conditions have been satisfied:

1) The failure to perform the remediation was the result of an inability of the person(s) to enter upon real or personal property owned by another person; and

2) The person(s) took all appropriate action, pursuant to section N.J.S.A. 58:10B-16, to obtain access to the property. NJDEP shall evaluate whether the person(s) took "all appropriate action to obtain access to the property" based on compliance with the following requirements:

a) Within ten days of the identification of the need for remediation activities in an area or areas not owned by the person(s) responsible for conducting the remediation the person(s) shall send a written request for access to the property owner. The request shall include a site map indicating the scope of access required, the proposed locations of remediation activities, and a written description of the extent of access required. The written request shall also ask that the property owner respond in writing within thirty days to said request. This letter shall be sent certified mail/return receipt requested or by similar means. A copy of the letter and signed receipt shall be sent to the Department upon

return of the receipt to the person(s) responsible for conducting the remediation.

b) Should the off-site property owner fail to respond within thirty days, the person(s) responsible for conducting the remediation shall send a second request to the property owner. The person(s) seeking access shall request that the property owner respond in writing within fifteen days. The person(s) responsible for conducting the remediation must specifically inform the property owner that he (the person(s) responsible for conducting the remediation) will initiate an action in Superior Court, pursuant to N.J.S.A. 58:10B-16, if an access agreement cannot be executed within 90 days of receipt of the original request or if the property owner does not respond within the fifteen day period from receipt of the second notice. This letter shall be sent certified mail/return receipt requested or by similar means. A copy of the letter and signed receipt shall be sent to the NJDEP upon return of the receipt to the person(s) responsible for conducting the remediation.

c) Should the off-site property owner fail to respond to the second request for off-site access or deny the person's request for access or for any reason the responsible party fails to execute an agreement with the owner of the subject property within 90 days of receipt of the original request, the person(s) responsible for conducting the remediation shall immediately initiate an action in Superior Court to obtain an order granting reasonable access to the property, pursuant to N.J.S.A. 58:10B-16. The party seeking access shall submit a copy of all relevant correspondence and/or filings to the NJDEP.

d) Submit any additional information or documentation required pursuant to N.J.S.A. 58:10B-16.

The person(s) attempt to obtain access to off-site areas shall not interfere with the person(s) obligations to comply with all other scheduled remediation activities in a NJDEP-approved workplan, unless otherwise established by the NJDEP.

F. Towne Laboratories, Inc. shall collect ground water level measurements from monitoring wells MW-1 through MW-4 and the three new wells and prepare new ground water flow maps.

G. Towne Laboratories, Inc. shall collect one round of ground water samples from monitoring wells MW-1 through MW-4 and the three new wells and analyze them for EPA target compound list volatile organic or priority pollutant volatile organic scans including xylene with a library search (VO+10) and priority pollutant metals (PPM).

IV Other Requirements

A. Towne Laboratories, Inc. shall submit a copy of the Hazardous Waste Manifest #NJA 2102730 that has been signed by the receiving facility.

5

V General Requirements

A. Towne Laboratories, Inc. shall submit a Remedial Action Schedule which incorporates the investigation and/or remediation of all remaining areas of environmental concern in accordance with the N.J.A.C. 7:26E-6.5 within 30 calendar days of the receipt of this letter. Towne Laboratories, Inc. shall note the implementation and completion date for each remedial phase, submission dates of any workplans or interim reports for which Towne Laboratories, Inc. requests the NJDEP's review and the submission dates for all workplans and reports that require the NJDEP's approval, including any report in support of a no further action proposal. Be advised that, in accordance with N.J.S.A. 58:10B, Towne Laboratories, Inc. may remediate the site without prior submission or approval from the NJDEP; however, prior approval must be obtained from NJDEP for a remedial action involving ground water or surface water subject to N.J.S.A. 58:10A.

B. Towne Laboratories, Inc. shall submit the results or additional work plans in accordance with an approved schedule. Please note that only one copy of the Quality Assurance/Quality Control Deliverables is needed.

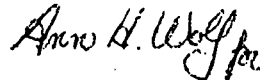
C. Towne Laboratories, Inc. shall submit summarized analytical results in accordance with the Technical Requirements For Site Remediation, N.J.A.C. 7:26E.

D. Towne Laboratories, Inc. shall collect all samples in accordance with the sampling protocol outlined in the May, 1992 edition of the NJDEP's "Field Sampling Procedures Manual".

E. Towne Laboratories, Inc. shall notify the assigned BEECRA Case Manager at least 14 calendar days prior to implementation of all field activities.

If you have any questions, please contact the Case Manager, Michael Mandracchia, at (609) 984-1845.

Sincerely,

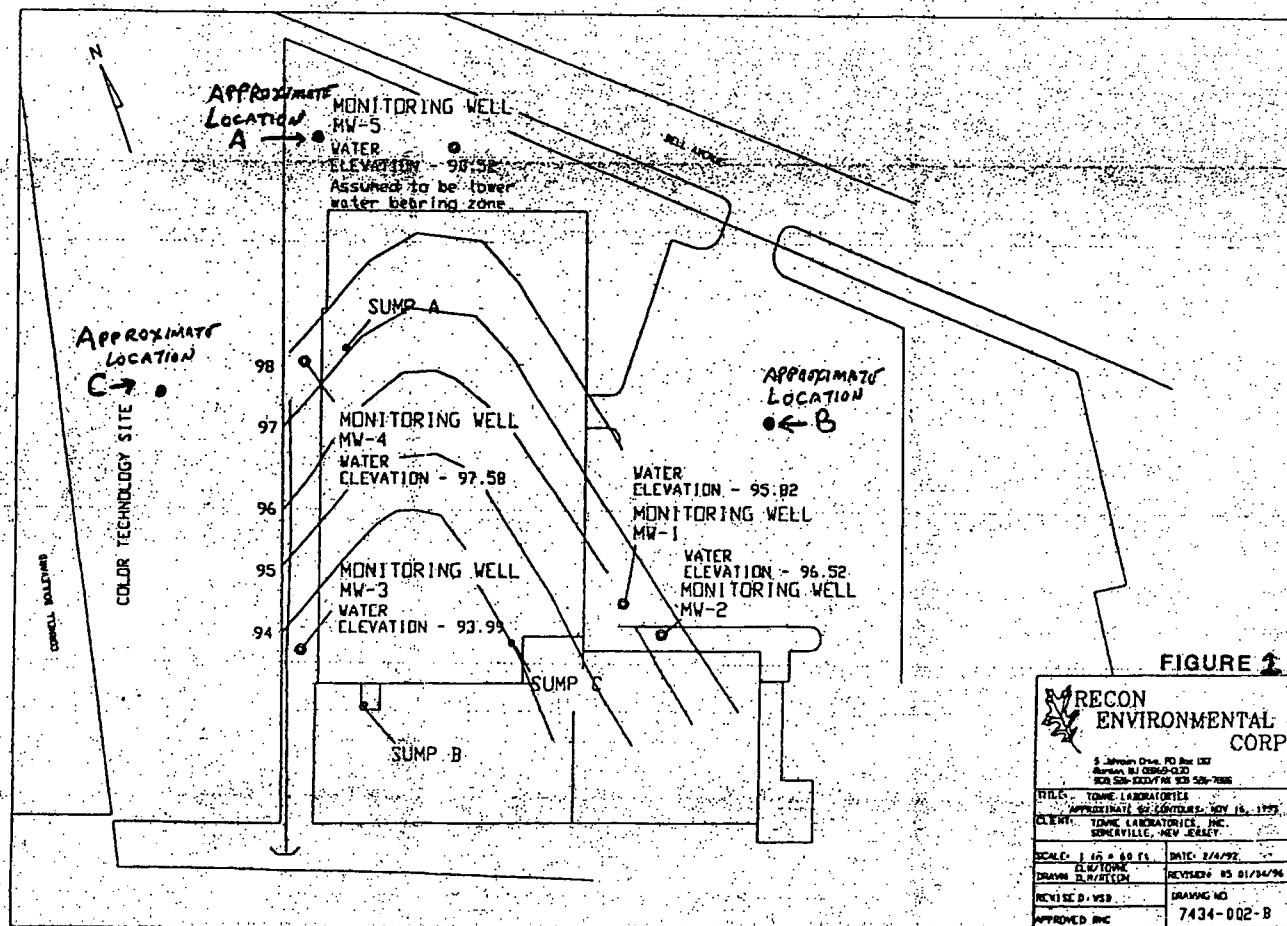


Maurice Migliarino, Section Chief
Bureau of Environmental Evaluation
and Cleanup Responsibility Assessment

Enclosure

c: Frank Camera, BEERA
Somerville Board of Health
Michael Obzansky, Towne Laboratories

P. 08



HANNOCH WEISMAN

A Professional Corporation

4 Becker Farm Road

Roseland, New Jersey 07068

(201) 535-5300

ATTORNEYS FOR TOWNE LABORATORIES, INC.

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION: SOMERSET

COUNTY

DOCKET NO. ---

Towne Laboratories, Inc.,

Plaintiff,

v.

CARL CURTIS, COLOR SCIENCES
CORP., formerly known or doing business as COLOR TECHNOLOGY,
INC., JAMES DOE, JOSEPH DOE,
JEREMY DOE, JANE DOE AND
JOAN DOE (the last five names being
fictitious names), STATE OF NEW
JERSEY, DEPARTMENT OF
ENVIRONMENTAL PROTECTION
and NEW JERSEY SPILL AND
COMPENSATION FUND
ADMINISTRATOR,

Defendants.

Civil Action

AFFIDAVIT OF JOHN J. OBZANSKY

STATE OF NEW JERSEY:

: ss.

COUNTY OF SOMERSET

I, JOHN J. OBZANSKY, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am submitting this Affidavit in support of Plaintiff's summary proceeding under Section 40 of the Industrial Site Recovery Act, P.L. 1993, C. 139, N.J.S.A. 58:10B-16.

2. I am President of Towne Laboratories, Inc., a New Jersey corporation, having an address for the purposes hereof in care of Mr. John Obzansky, 93 East Spring Street, Somerville, New Jersey ("Towne Labs").

3. Plaintiff is the former owner of certain real property commonly known as Lot 4, Block 127, located at 6-10 Bell Avenue, Somerville (the "Site"). On or about August 3, 1993, Plaintiff sold substantially all of its assets, including the Site, to Towne Technologies, Inc.

4. Prior to the transferring of Towne Labs assets, Towne Labs retained William Brokaw, a Scientific Associate for Environmental Management of Levine-Fricke-Recon ("Recon"), a consulting firm of engineers, hydrogeologists and applied scientists, to provide consulting services to Plaintiff. Mr. Brokaw was retained to conduct an investigation of certain real property commonly known as Lot 4, Block 127, located at 6-10 Bell Avenue, Somerville, NJ ("Site"), and to advise me of what actions would likely be required if the site were to trigger ECRA. I named Mr. Brokaw, under my authority as President of Towne Labs, as the company's agent to collect data and submit the required information to the NJDEP relative to the ISRA requirements at the Bell Avenue site.

5. In or about August 1996, I was advised by Mr. Brokaw that, under ISRA Case No. 93452, NJDEP instructed plaintiff via letter dated August 1, 1996, that plaintiff install three (3) additional monitoring wells, two (2) within the property-bounds of the Site formerly owned by plaintiff; and one (1) on certain real property commonly known as the former Color

Technology, Inc. facility, on Lot 1, Block 127, located at Cornell Street, Somerville, NJ ("Color Tech Property"), which is immediately adjacent to the Site.

6. Based on information provided from Mr. Brokaw, plaintiff claims that all of the ground water contamination found on-site is from the off-site operations at the Color Tech Property. On or about May 1, 1989, a fire occurred at the Color Tech Property which involved the discharge of certain substances into a potable water source. I was aware of this incident because I had occasion to conduct business at the Site in or about May 1989.


JOHN J. OBZANSKY

Sworn to and subscribed to before me
this 27 day of May, 1997.


NOTARY PUBLIC

KATHLEEN VIOLA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 20, 1999

HANNOCH WEISMAN

A Professional Corporation

4 Becker Farm Road

Roseland, New Jersey 07068

(201) 535-5300

ATTORNEYS FOR TOWNE LABORATORIES, INC.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: SOMERSET
COUNTY
DOCKET NO. ---

Towne Laboratories, Inc.,

Plaintiff,

v.

CARL CURTIS, COLOR SCIENCES
CORP., formerly known or doing busi-
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INC., JAMES DOE, JOSEPH DOE,
JEREMY DOE, JANE DOE AND
JOAN DOE (the last five names being
fictitious names), STATE OF NEW
JERSEY, DEPARTMENT OF
ENVIRONMENTAL PROTECTION
and NEW JERSEY SPILL AND
COMPENSATION FUND
ADMINISTRATOR,

Defendants.

Civil Action

AFFIDAVIT OF WILLIAM BROKAW

LETTER OF TRANSMITTAL

May 14, 1997

Hannoch Weisman
A Professional Corporation
4 Becker Farm Road
Roseland, NJ 07068

Re: Affidavit of William Brokaw

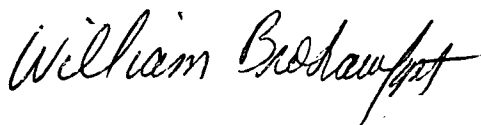
The following items are enclosed via Fed Ex.

Description	No. of Copies
Civil Action - Affidavit of William Brokaw	1

The item(s) are transmitted: ☒ At your request ☐ For your action
☐ For your review/comment ☐ For your files
☐ For your approval ☐ For your information

Comments:

Sincerely,

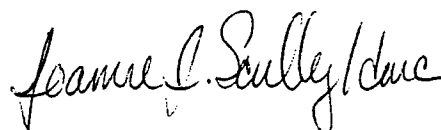


William S. Brokaw, CHMM
Scientific Associate, Environmental Management

WSB/ymt
Enclosure

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Approved by:



Joanne Jeager Scully, PE, CIH
Vice President

STATE OF NEW JERSEY:

: ss.

COUNTY OF SOMERSET

I, WILLIAM BROKAW, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am submitting this Affidavit in support of plaintiff's summary proceeding under Section 40 of the Industrial Site Recovery Act, P.L. 1993, C. 139, N.J.S.A. 58:10B-16.

2. I am a Scientific Associate for Environmental Management of Levine-Fricke-Recon ("Recon"), a consulting firm of engineers, hydrogeologists and applied scientists, with its principal place of business at 5 Johnson Drive, Raritan, New Jersey 08869. Recon provides consulting services to plaintiff, Towne Laboratories, Inc. ("Towne Labs"). As Scientific Associate, I am responsible for overseeing the Towne Labs ISRA case. Mr. Obzansky, President of Towne Labs, named me as his agent to collect data and submit the required information to the NJDEP relative to the ISRA requirements at the Bell Avenue site.

3. On or about October 21, 1988, Recon was retained by the plaintiff to provide consulting services in connection with certain real property commonly known as Lot 4, Block 127, located at 6-10 Bell Avenue, Somerville, NJ ("Site"). These services consisted of evaluating the environmental conditions of the site and to advise Mr. Obzansky what actions would likely be required if the site were to trigger ECRA.

4. On or about August 2, 1993, plaintiff became involved in an investigation pursuant to the New Jersey Environmental Cleanup Responsibility Act, *N.J.S.A. 13:1K-6, et seq.* ("ECRA") (now the Industrial Site Recovery Act, *N.J.S.A. 13:1K-6 et seq.* (amended 1993) ("ISRA")), at its former manufacturing facility on 6-10 Bell Avenue, Somerset, NJ (the "Facility") (ECRA and ISRA are collectively referred to as ISRA) under ISRA Case Number 93452.

5. As part of its actions under ISRA, Towne Labs abandoned one of their underground storage tanks, conducted a site assessment and installed monitoring wells to assess the groundwater through the Facility. The results of the initial groundwater evaluations were submitted to the NJDEP on or about April 28, 1995. After reviewing the data, the NJDEP instructed plaintiff via letter, on August 1, 1996, that plaintiff install three (3) additional monitoring wells" two (2) within the property-bounds of the Facility owned by plaintiff; and one (1) on certain real property commonly known as the former Color Technology, Inc. facility, on Lot 1, Block 127, located at Cornell Street, Somerville, NJ ("Color Tech Property"), which is immediately adjacent to the Facility. A copy of the August 1, 1996 letter with a map showing the locations of the proposed monitoring wells is attached hereto as Exhibit 1.

6. On or about August 6, 1996, I reviewed the tax records of the Borough of Somerville, NJ for the owner of the Color Tech Property. Upon reviewing tax records for the year 1996, said records identified defendant, Mr. Carl Curtis, President of Color Technology, Inc., 243 Davidson Avenue, Ramsey, NJ 07446, as the current owner of the Color Tech Property.

7. On August 12, 1996, I and Recon Operations Manager Robert Charnow forwarded a certified letter to Mr. Curtis notifying him of the NJDEP's directive and requesting permission to access the Color Tech Property to install a shallow monitoring well for the purpose of collecting groundwater samples for laboratory analysis, as per the NJDEP directive. On August 20, 1996, Recon received the return receipt from the August 12 certified letter, acknowledging that Mr. Curtis had received same. Attached hereto as Exhibit 2 is a true and accurate copy of the August 12, 1996 letter.

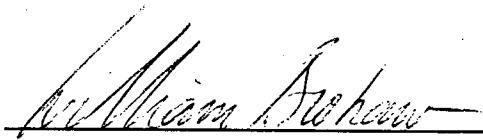
8. By September 1996, Mr. Curtis had not contacted Recon to discuss our request for access to the Color Tech Property. On September 11, 1996, I forwarded a second letter, via certified mail, to Mr. Curtis requesting access to the Color Tech Property in order to comply with the NJDEP September 20, 1996, directive. Letters were sent to and received at Color Technology in Somerville and at 115-117 Moonachie Avenue in Carlstadt, NJ. However, the letter

sent to Mr. Curtis' home in Ramsey was returned unopened, in late September with the word "Refused" written on the envelope. Attached hereto as Exhibit 3, is a true and accurate copy of the September 11, 1996 letter.

9. By January 1997 I had still not heard from Mr. Curtis regarding our request for access to the Color Tech Property. On February 19, 1997, I forwarded a third request letter to Mr. Curtis, via certified mail, which receipt thereof was acknowledged by Mr. Curtis on February 27, 1997. Attached hereto as Exhibit 4, is a true and accurate copy of the February 18 letter.

10. On September 26, 1996, Mr. Curtis contacted me by telephone at my office in Raritan, NJ. Mr. Curtis evaded my request for permission to install the monitoring well on the Color Tech Property.

11. On March 24, 1997, I reviewed, for a second time, the tax records of the Borough of Somerville and verified that Mr. Curtis was shown as the recorded owner of the Color Tech Property.


WILLIAM BROKAW

Sworn to and subscribed to before me
this 14 day of May, 1997.


NOTARY PUBLIC

KAREN LEE O'BRIEN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 19, 2000





State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

William Brokaw
Racon Systems, Inc.
5 Johnson Drive
P.O. Box 130
Raritan, NJ 08869

AUG 01 1996

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return of the receipt to the person(s) responsible for conducting the remediation.

b) Should the off-site property owner fail to respond within thirty days, the person(s) responsible for conducting the remediation shall send a second request to the property owner. The person(s) seeking access shall request that the property owner respond in writing within fifteen days. The person(s) responsible for conducting the remediation must specifically inform the property owner that he (the person(s) responsible for conducting the remediation) will initiate an action in Superior Court, pursuant to N.J.S.A. 58:10B-16, if an access agreement cannot be executed within 90 days of receipt of the original request or if the property owner does not respond within the fifteen day period from receipt of the second notice. This letter shall be sent certified mail/return receipt requested or by similar means. A copy of the letter and signed receipt shall be sent to the NJDEP upon return of the receipt to the person(s) responsible for conducting the remediation.

c) Should the off-site property owner fail to respond to the second request for off-site access or deny the person's request for access or for any reason the responsible party fails to execute an agreement with the owner of the subject property within 90 days of receipt of the original request, the person(s) responsible for conducting the remediation shall immediately initiate an action in Superior Court to obtain an order granting reasonable access to the property, pursuant to N.J.S.A. 58:10B-16. The party seeking access shall submit a copy of all relevant correspondence and/or filings to the NJDEP.

d) Submit any additional information or documentation required pursuant to N.J.S.A. 58:10B-16.

The person(s) attempt to obtain access to off-site areas shall not interfere with the person(s) obligations to comply with all other scheduled remediation activities in a NJDEP-approved workplan, unless otherwise established by the NJDEP.

F. Towne Laboratories, Inc. shall collect ground water level measurements from monitoring wells MW-1 through MW-4 and the three new wells and prepare new ground water flow maps.

G. Towne Laboratories, Inc. shall collect one round of ground water samples from monitoring wells MW-1 through MW-4 and the three new wells and analyze them for EPA target compound list volatile organic or priority pollutant volatile organic scans including xylene with a library search (VO+10) and priority pollutant metals (PPM).

IV Other Requirements

A. Towne Laboratories, Inc. shall submit a copy of the Hazardous Waste Manifest #NJA 2102730 that has been signed by the receiving facility.

5

V General Requirements

A. Towne Laboratories, Inc. shall submit a Remedial Action Schedule which incorporates the investigation and/or remediation of all remaining areas of environmental concern in accordance with the N.J.A.C. 7:26E-6.5 within 30 calendar days of the receipt of this letter. Towne Laboratories, Inc. shall note the implementation and completion date for each remedial phase, submission dates of any workplans or interim reports for which Towne Laboratories, Inc. requests the NJDEP's review and the submission dates for all workplans and reports that require the NJDEP's approval, including any report in support of a no further action proposal. Be advised that, in accordance with N.J.S.A. 58:10B, Towne Laboratories, Inc. may remediate the site without prior submission or approval from the NJDEP; however, prior approval must be obtained from NJDEP for a remedial action involving ground water or surface water subject to N.J.S.A. 58:10A.

B. Towne Laboratories, Inc. shall submit the results or additional work plans in accordance with an approved schedule. Please note that only one copy of the Quality Assurance/Quality Control Deliverables is needed.

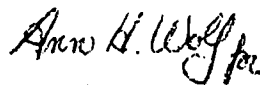
C. Towne Laboratories, Inc. shall submit summarized analytical results in accordance with the Technical Requirements For Site Remediation, N.J.A.C. 7:26E.

D. Towne Laboratories, Inc. shall collect all samples in accordance with the sampling protocol outlined in the May, 1992 edition of the NJDEP's "Field Sampling Procedures Manual".

E. Towne Laboratories, Inc. shall notify the assigned BEECRA Case Manager at least 14 calendar days prior to implementation of all field activities.

If you have any questions, please contact the Case Manager, Michael Mandracchia, at (609) 984-1845.

Sincerely,



Maurice Migliarino, Section Chief
Bureau of Environmental Evaluation
and Cleanup Responsibility Assessment

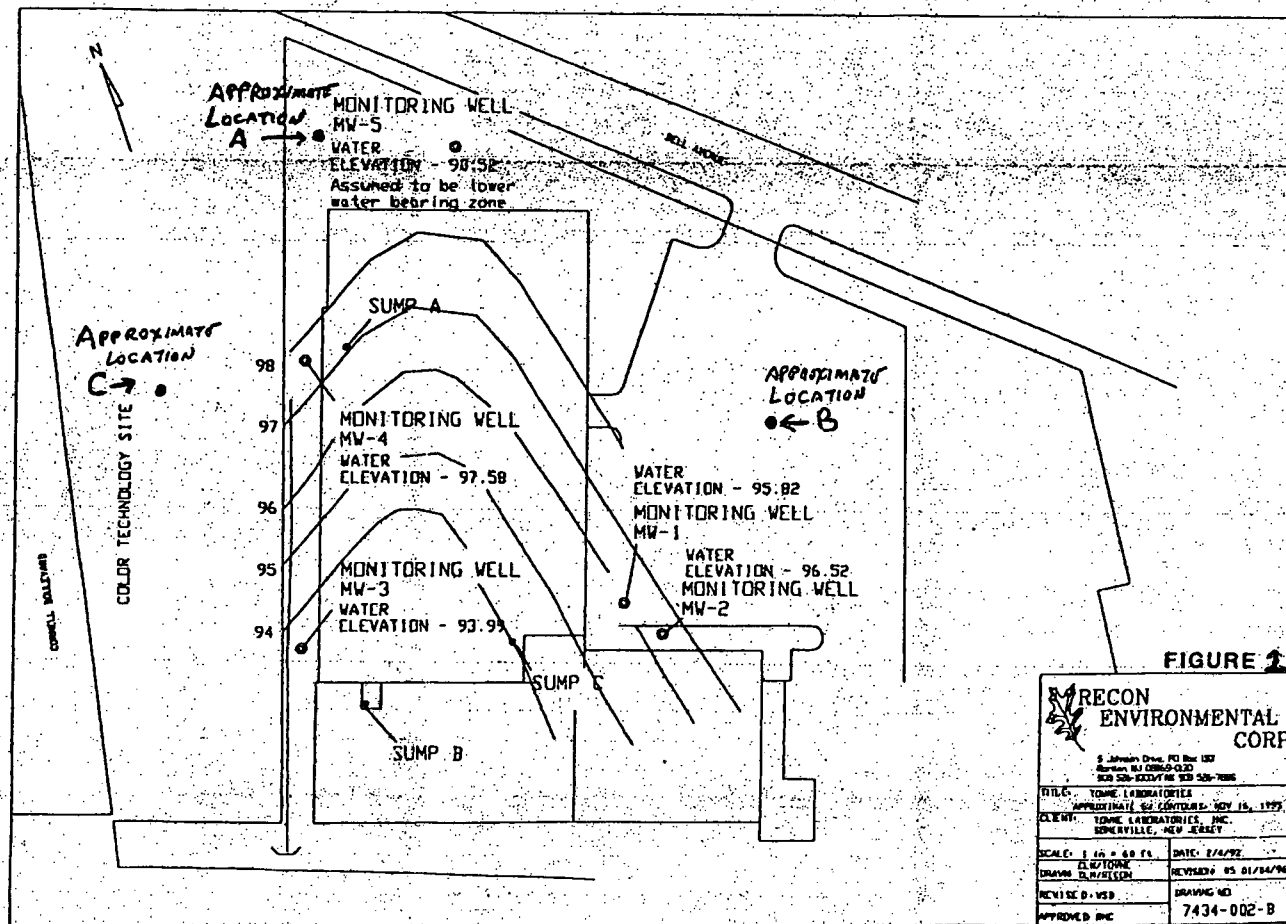
Enclosure

c: Frank Camera, BEERA
Somerville Board of Health
Michael Obzansky, Towne Laboratories

MAY-13-1997 12:29

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P.08





RECYCLED

ALL-STATE® LEGAL 800-222-0510 ED11

**COPY**August 12, 1996
CERTIFIED MAIL

Mr. Carl Curtiss
243 Davidson Avenue
Ramsey NJ 07446

Re: Site Access to COLOR TECHNOLOGY Site
RECON Project No. EM6-7615

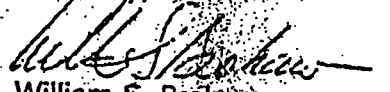
Dear Mr. Curtiss:

RECON ENVIRONMENTAL CORP. (RECON) provides consulting services to TOWNE LABORATORIES which owns the property next to the COLOR TECHNOLOGY property at Block 127 Lot 1 in Somerville, Somerset County, NJ. Recently, TOWNE LABORATORIES abandoned one of their underground storage tanks, conducted a site assessment and installed monitoring wells to assess the groundwater. The results were submitted to the NJDEP which requested that TOWNE install three additional wells. The NJDEP specified that two of the wells be installed on the TOWNE property and one of the wells be installed on the COLOR TECHNOLOGY property (see enclosed map which shows well location specified by the NJDEP).


We request your permission to install a shallow monitoring well on your site and to collect groundwater samples for laboratory analysis (as directed by the NJDEP). RECON would need to drive a truck-mounted drill rig onto the site to install the well. Two weeks later we would require access to collect a water sample from the well.

To comply with this directive from the NJDEP, we need to receive your response to our request within thirty (30) days from the date of receipt of this letter. Thank you for your attention to this matter.

Sincerely,


William S. Brokaw
Scientific Associate
Environmental Management

Reviewed by:


Robert M. Charnow, CPG
Operations Manager, Environmental Management

WSB:klo

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cc: John Obzansky, TOWNE LABORATORIES
Richard Conway, Esq. HANNOCH WEISMAN

5 Johnson Drive, P.O. Box 130, Raritan, NJ 08869 • (908) 526-1000 • Fax (908) 526-7886

A Levine-Fricke-Recon Group Company

COPY

PROPOSED WELL LOCATION
(SUBJECT TO UNDERGROUND
UTILITIES AND SURFACE
FEATURES [e.g. BUILDINGS])

APPROXIMATE
LOCATION OF
PROPOSED WELL



ON COLOR TECH.

COLOR TECHNOLOGY SITE

SEWAGE TREATMENT

Lowri Laboratories
Site





September 11, 1996
CERTIFIED MAIL

Mr. Carl Curtiss
243 Davidson Avenue
Ramsey NJ 07446


Re: Second Request
Site Access to COLOR TECHNOLOGY Site
RECON Project No. EM6-7615

Dear Mr. Curtiss:

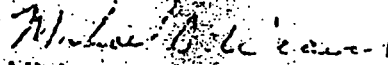
On August 12, 1996, we sent you a letter (copy attached) to request your permission to install a shallow monitoring well on your site and to collect groundwater samples for laboratory analysis (as directed by the NJDEP). As indicated in our letter, RECON would need to drive a truck-mounted drill rig onto the site to install the well. Two weeks later we would require access to collect a water sample from the well.

We have not received your response to our access request and therefore we are submitting this second request. To comply with this directive from the NJDEP we need to receive your response to this second request within fifteen (15) days. Please be advised that TOWNE LABORATORIES will initiate an action in Superior Court pursuant to NJSA 58:10B-16 if an access agreement cannot be executed within 90 days of receipt of the original request or if you do not respond within fifteen (15) days from the date of receiving this second request.

Sincerely,


William S. Brokaw
Scientific Associate
Environmental Management

Reviewed by:


Michael D. Weaver, CPG
Senior Geologist

WSB/klo

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cc: John Obzansky, TOWNE LABORATORIES
Richard Conway, Esq. HANNOCH WEISMAN
President, COLOR TECHNOLOGY (Somerville, NJ)
President, COLOR TECHNOLOGY (Carlstadt, NJ)

5 Johnson Drive, P.O. Box 130, Raritan, NJ 08869 • (908) 526-1000 • Fax (908) 526-7886

A Levine-Fricke-Recon Group Company



February 18, 1997
CERTIFIED MAIL

LEFR-EM5-7434

Mr. Carl Curtiss
243 Davidson Avenue
Ramsey NJ 07446

Re: Third Request
Site Access to Color Technology Site.

Dear Mr. Curtiss:

On August 12, 1996 and again on September 11, 1996 we sent you letters (copies attached) to request your permission to install a shallow monitoring well on your site and to collect groundwater samples for laboratory analysis (as directed by the NJDEP). As indicated in our letters, Towne Laboratories will need to drive a truck-mounted drill rig onto the site to install the well. Two weeks later access will be required to collect a water sample from the well. Access will also be required at later dates for subsequent sampling.

We have not received your written response to our access request and therefore we are submitting this third request. To comply with this directive from the NJDEP we need to receive your written response to this third request immediately. Please be advised that Towne Laboratories will initiate an action in Superior Court pursuant to NJSA 58:10B-16 if you do not respond to this request or if an access agreement cannot be executed.

Sincerely,

William S. Brokaw
Scientific Associate
Environmental Management

Approved by:

Robert M. Chernow, CPG
Manager, Operations
Environmental Management

WSB/tal

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cc: John Obzansky, Towne Laboratories
Richard Conway, Esq. Hannoeh Weisman
President, Color Technology (Somerville, NJ)
President, Color Technology (Carlstadt, NJ)